

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3772 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MOHMED ALIAS GABU

AJAJKHAN PATHAN

Versus

DISTRICT MAGISTATE, BARODA 7 ORS.

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Appearance:

MR ANIL S DAVE for Petitioner

Mr. Nigam R.Shukla, A.G.P. for Respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against detention order dated 24th April, 1996 passed by the District Magistrate, Baroda detaining the petitioner under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985. The detention order was executed on 25th April, 1996 and since then the

petitioner is in detention lodged at Jamnagar Jail, Jamnagar.

2. The Special Civil Application was filed on 20th May, 1996 and on 21st May, 1996 Rule returnable for 8th July, 1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

3. The grounds enclosed with the detention order show that four criminal cases were registered against the petitioner under sections 16 and 17 of the Indian Penal Code and the petitioner has been detained as a dangerous person. He was known as a Dada and reference has been made to his anti-social and criminal activities.

4. Although the detention order has been challenged on several grounds, at the time of arguments, learned counsel for the petitioner kept his arguments confined to the grounds raised in para 8 of the petition wherein it has been stated that no copy of the bail application or bail order in any of the criminal cases had been supplied to the petitioner by the detaining authority and therefore, his right of making an effective representation under Constitution of India has been violated. The detention order deserves to be set aside on this ground alone as the copies of the bail application and bail orders were vital and relevant to the right of making an effective representation under Article 22(5) of the Constitution.

5. The factual allegation made by the petitioner has not been controverted and Mr. Nigam Shukla, learned A.G.P. has failed to show from the record that copies of any bail application or bail orders were supplied to the petitioner. It has been held by this court that such documents are vital and relevant to the right of making an effective representation and accordingly, I find that the detention order cannot be sustained in the eye of law and the same deserves to be quashed and set aside on this ground alone.

6. Accordingly, the Special Civil Application is allowed. The impugned order dated 24th April, 1996 passed by the District Magistrate, Vadodara, is quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is accordingly

made absolute.